

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Robert Lee Foster,

Plaintiff,

vs.

Spartanburg County Police Department and
Crime Lab; Spartanburg County; Sheriff
Department Crime Lab of Spartanburg City;
Tony Fisher; Chuck Wright; Officer Mynlor
Beach; Sgt Ashley C. Harris,

Defendants.

Civil Action No. 3:10-cv-1469-CMC

ORDER

This matter is before the court on Plaintiff's second motion to reopen case, arguing he was never indicted in state court for the conviction on which he is serving time, and he should be released based on his medical conditions and the coronavirus. ECF No. 39. He also filed a "Petition for Writ of Habeas Corpus," citing 28 U.S.C. § 2254. ECF No. 40. Defendant appears to argue he has been held too long because his prior convictions have now been expunged. *Id.* He appears to have filed this document in several closed cases he has previously brought in this District.

Plaintiff's original case brought pursuant to 42 U.S.C. § 1983, alleging improprieties in the crime lab testing of the substances in his criminal case, was closed on September 27, 2010. ECF No. 18. That case was dismissed because Plaintiff had three strikes under 28 U.S.C. § 1915(g) yet failed to pay the filing fee. Plaintiff appealed that dismissal, but the appeal was dismissed for failure to prosecute. ECF No. 28.

Plaintiff's current motion requests his original § 1983 case be reopened. However, he alleges new grounds for relief that appear to be unrelated to the original case. In addition, nearly ten years have passed since the previous case was closed. It appears Plaintiff is attempting to circumvent the three strikes rule, which would not allow him to file another case without paying the filing fee, by requesting to reopen his old case. The court will not reopen the previously closed case.¹ Further, any Petition for Writ of Habeas Corpus would have to be filed as a new case under § 2254, not merely as a new motion in an old case. Plaintiff's motion is denied and his petition for writ of habeas corpus is dismissed (ECF Nos. 39, 40).

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
June 16, 2020

¹ It also appears the grounds in his current motion to reopen challenge the constitutionality of his continued incarceration after a state court conviction. Such a challenge would be barred in a § 1983 action by *Heck v. Humphrey*, 512 U.S. 477 (1994).